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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

Federal Communications Commission  
Office of Secretary

In the matter of )

Applications of AT&T Wireless Services, Inc. and )  
Cingular Wireless Corporation )

For Consent to Transfer Control of Licenses and )  
Authorizations )

File Nos. 0001656065, *et al.* )

and )

Applications of Subsidiaries of T-Mobile USA, )  
Inc. and Subsidiaries of Cingular Wireless )  
Corporation )

For Consent to Assignment and Long-Term *De* )  
*Facto* Lease of Licenses )

File Nos. 0001771442, 0001757186, and )  
0001757204 )

and )

Applications of Triton PCS License Company, )  
LLC, AT&T Wireless PCS, LLC, and Lafayette )  
Communications Company, LLC )

For Consent to Assignment of Licenses )

File Nos. 0001808915, 0001810164, 0001810683, )  
and 50013CWAA04 )

WT Docket No. 04-70

WT Docket No. 04-254

WT Docket No. 04-323

To: Office of The Secretary; Attention Commissioners

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**PETITION FOR RECONSIDERATION**  
**FILED BY**  
**ACADIANA CELLULAR GENERAL PARTNERSHIP**

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November 26, 2004

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Acadiana Cellular General Partnership (Acadiana Cellular),<sup>1</sup> by its attorneys, and pursuant to Federal Communications Commission (Commission) Rule 1.106(b)(1), respectfully files this Petition for Reconsideration (Petition) of the Commission's October 26, 2004, decision to grant the application to transfer control of licenses and authorizations between Cingular Wireless Corporation (Cingular)<sup>2</sup> and AT&T Wireless Services, Inc. (AWS) in its Memorandum Opinion and Order (*MM&O*, FCC 04-255). This Petition is timely filed pursuant to Commission Rules 1.4(b) and 1.106(f).

## I. INTRODUCTION AND SUMMARY

As part of its review of the proposed merger and transfer of radio licenses between Cingular and AWS in this proceeding, Acadiana Cellular submits that the Commission should have thoroughly examined on the record the wireless assets of both Cingular and AWS in two Cellular Market Areas (CMAs) that were identified in its "Initial Screen" as noted in Appendix C, p. 126, of the *MM&O*: (1) CMA458 - Louisiana 5 - Beauregard (CMA458); and (2) CMA459 - Louisiana 6 - Iberville (CMA459). Had the Commission conducted such a thorough examination, it would be evident that Cingular already had a strong operating presence in these markets and that upon acquisition of additional spectrum from AWS, Cingular would gain a multiple presence from which it could engage in anticompetitive practices. This is exactly what

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<sup>1</sup> Acadiana Cellular is a general partnership established on July 19, 1989, under Delaware law by Louisiana Cellular, Inc. (LCI), Delcambre Cellular, Inc. (DCI), and BellSouth Mobility LLC (BellSouth Mobility), now doing business as Cingular. Acadiana Cellular currently operates and offers wireless services to the public under the Cingular brand name. We make this filing on behalf of two of Acadiana Cellular's General Partners - LCI and DCI, which together have the controlling interest in such General Partnership, both in their individual rights and as General Partners of Acadiana Cellular.

<sup>2</sup> SBC Communications, Inc. and BellSouth Corporation jointly own Cingular, with each company holding a 50 percent economic and voting interest. See *MM&O*, ¶ 12.

is happening and it is the wrong that Acadiana Cellular urges the Commission to remedy on Reconsideration. Cingular is using its multiple holdings in these markets to abuse and whipsaw its partners in Acadiana Cellular contrary to law and the public interest.

During the pendency of the Commission's consideration of the transfer of control herein, Cingular represented to its Acadiana Cellular partners that it would negotiate in good faith with the Acadiana Cellular partnership in regards to selling the AWS PCS spectrum to the partnership once the Cingular-AWS merger was approved. To the contrary, as a brazen about-face, Cingular in recent business negotiations with its partners, is offering them unconscionable terms, which would result in a substantial decrease in the partners' ownership interests in terms of value and control. Thus, Cingular is already abusing its newly gained pervasive market power in Acadiana Cellular's service territory. Accordingly, Acadiana Cellular urges the Commission to require the post-merger Cingular to, at a minimum, divest all acquired AWS assets in the Baton Rouge, Louisiana, Basic Trading Area (BTA), which is known as BTA032. In the alternative, the Commission should, pursuant to public notice, conduct a thorough, on the record investigatory proceeding to determine how the merger will impact competition in Acadiana Cellular's service territory and how it will impact Acadiana Cellular's customer base. In such context, the Commission should specifically solicit analytic input from the United States Department of Justice Antitrust Division.

## **II. BACKGROUND**

Acadiana Cellular operates an analog cellular system in two service territories pursuant to two cellular licenses:

- (1) call sign KNKN804 in CMA458 - Louisiana 5 - Beauregard in the Parishes of Allen (portions), Evangeline, Avoyelles, St. Landry, Acadia, Vermillion (portions), and Pointe Coupee, Louisiana; and
- (2) call sign KNKN499 in CMA459 - Louisiana 6 - Iberville in the Parishes of Iberia, St. Mary and Assumption, Louisiana.

There are three general partners in Acadiana Cellular: Cingular has a 35.0 percent partnership interest, LCI has a 32.5 percent partnership interest, and DCI has a 32.5 percent partnership interest.<sup>3</sup>

On March 19, 2004, Cingular and AWS filed a series of applications seeking Commission approval of the transfer of control of licenses and other authorizations held by AWS to Cingular.<sup>4</sup> As a consequence of the merger, AWS became a wholly-owned subsidiary of Cingular.<sup>5</sup> The merger results in a “monstrosity” of a competitor with significant market power.<sup>6</sup>

In the Baton Rouge, Louisiana BTA (BTA032), there are seven call signs licensed to entities affiliated with both Cingular and AWS. Specifically, in Cellular Block B of BTA032 (CMA458 and CMA459), there are three active cellular licensees affiliated with Cingular: Acadiana Cellular (call signs KNKN804 in CMA458 and KNKN499 in CMA459); BellSouth

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<sup>3</sup> Cingular (originally BellSouth Mobility) has been the Managing General Partner of the partnership since its formation, and Cingular, pursuant to an agreement between the General Partners, may not be removed as Managing General Partner before December 31, 2004.

<sup>4</sup> *AT&T Wireless Services, Inc. and Cingular Wireless Corporation Seek FCC Consent To Transfer Control of Licenses and Authorizations*, Public Notice, WT Docket No. 04-70, DA 04-932, p. 1, (rel. April 2, 2004).

<sup>5</sup> *Id.*

<sup>6</sup> “Today, AT&T Wireless is the second largest provider of wireless communications services in the United States based on revenues.” See *MM&O*, ¶ 10. “Currently, Cingular is the second largest provider of wireless voice and data services in the United States in terms of subscribership.” See *MM&O*, ¶ 13.

Mobility (call sign KNKN803 in CMA458); and Lafayette MSA LP (call sign KNKN500 in CMA459).<sup>7</sup> The Commission's license reference copies list the same exact contact address in Dallas, Texas for all three of these affiliated Cellular Block B licensees.

In addition to the above-referenced licenses, AWS is licensee for three call signs in three PCS Blocks in BTA032: PCS Block D – TeleCorp PCS, LLC (AWS, call sign KNLG381); PCS Block E – AWS (call sign KNLG382); and PCS Block F – TeleCorp Holding Corp II, LLC (AWS, call sign KNLG906).<sup>8</sup>

Acadiana Cellular submits that upon recognition by the Commission that it has permitted Cingular to: (1) attain ownership interests in three different entities competing in Cellular Block B of BTA032, and (2) attain ownership interests in three PCS entities in BTA032 (resulting in a coverage area with considerable overlapping services by the same entity), the Commission will quickly move to remedy this matter.<sup>9</sup>

It is critical to point out that the Petitioner (Acadiana Cellular through LCI and DCI) considered alerting the Commission to these facts before the *MM&O* was released. However, Cingular represented to LCI and DCI in a partnership meeting that it would sell the AWS PCS spectrum to the partnership, based on fair terms and conditions, once the proposed merger was approved. Thus, Cingular falsely induced its partners in Acadiana Cellular to sit on their hands

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<sup>7</sup> There are also three unaffiliated licensees in BTA032's Cellular Block B: Kaplan Telephone Company (call sign KNKN805 in CMA458); Centennial Communications (call sign KNKQ374 in CMA458 and call sign KNKN339 in CMA459); and RADIOFONE, INC (call sign KNKQ396 in CMA459).

<sup>8</sup> See Attachment 9, p. 3 to the main Cingular/AWS merger application (File Number 0001656065, Attachment I). It should be noted that Cingular and AWS failed to disclose that Cingular has a general partnership interest in Acadiana Cellular in its listing of wireless licensees in Cellular Block B of BTA032.

<sup>9</sup> See Cingular and AWS Coverage Map for LA (Attachment II).

and remain silent during the FCC merger review process. Pursuant to Commission Rule 1.106(c), the Commission should determine that consideration of the facts relied on in the instant Petition is in the public interest because Cingular was able to avoid Acadiana Cellular's intervention in this proceeding by false inducement.

Once the Commission granted the merger between Cingular and AWS, representatives of Cingular treated representatives from both LCI and DCI with open hostility. In face-to-face business negotiations with representatives from both LCI and DCI conducted on November 4, 2004 (shortly after the *MM&O* was released), representatives from Cingular failed to live up to prior promises to fairly negotiate the acquisition terms of the AWS PCS spectrum by Acadiana Cellular. Instead, Cingular attempted to coerce LCI and DCI to pay a "ransom-like" price for the AWS PCS spectrum by requiring LCI and DCI to spinelessly accede to diminutive limited partnership roles (thereby relinquishing voting and economic control) in Acadiana Cellular. If LCI and DCI did not agree to the diminished limited partnership roles, the Cingular representatives threatened to:

- quit as Managing General Partner,
- deny Acadiana Cellular access to Cingular's switching facilities,
- withdraw access to the Cingular billing and collection services relied on by Acadiana Cellular,
- use the newly acquired AWS PCS spectrum to directly compete with Acadiana Cellular in its coverage area, and
- do so under the Cingular brand name, which it would steal away from Acadiana Cellular, thereby leveraging Cingular's substantial control of its brand name.

Because it now has been granted concentrated market power by the Commission, Cingular is flagrantly seeking to intimidate its partners through impossible terms in its business “negotiations” with its Acadiana Cellular partners. The Commission should not let Cingular’s anticompetitive behavior go unpunished.

### **III. ARGUMENT**

Cingular’s activity in BTA032 is patently anticompetitive, is contrary to the public interest, convenience and necessity, and will substantially lessen competition in this market. Specifically, the *MM&O* should be modified to require the new Cingular to divest all of the AWS assets it acquired in BTA032. Pursuant to the *MM&O*, Cingular has acquired the AWS PCS spectrum (30 MHz) in the Acadiana Cellular service territory. Thus, the new and emboldened Cingular holds pervasive market power in both the relevant product and geographic markets that it is threatening to leverage (illegally) against its partners in Acadiana Cellular.

Acadiana Cellular argues that permitting the post-merger Cingular to keep all of its own licenses in Acadiana Cellular’s service territory, and those acquired from AWS in the *MM&O*, raises clear, unambiguous and significant anticompetitive issues. Such a concentration of market power is contrary to the Commission’s mandate to promote the public interest, convenience and necessity as required by the Communications Act.<sup>10</sup>

On June 30, 2004, John Muleta, Chief of the FCC’s Wireless Telecommunications Bureau, sought additional information from Cingular and AWS regarding 57 Rural Service Areas (RSAs), which, unfortunately, did not include Acadiana Cellular’s RSA in Baton Rouge,

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<sup>10</sup> See 47 U.S.C. § 310(d) and 47 U.S.C. § 214(a).

LA.<sup>11</sup> In his letter, Mr. Muleta requested specific responses from Cingular and AWS to 18 detailed questions, including the merger's impact on competition. The letter also requested a study of the impact the merger may have on Cingular and AWS' customer base.

We respectfully request, should the Commission decline to order divestiture of the AWS assets (which we submit is the most appropriate remedy), that the Commission require Cingular and AWS to respond to the Muleta letter for all of the Cingular spectrum licensed in the Acadiana Cellular service territory (BTA032), especially the former AWS PCS licenses. Acadiana Cellular believes that such an examination will highlight the anticompetitive, indeed, poisonous environment as described herein whereby Cingular remains Managing General Partner of Acadiana Cellular, holds other interests as referenced above and then gains control of the valuable AWS PCS spectrum overlapping the Acadiana Cellular service territory.

Acadiana Cellular is most concerned that Cingular, in its role as Managing General partner, has gained confidential, business secrets and customer proprietary network information (CPNI), which it would use against Acadiana Cellular should Cingular decide to directly compete against Acadiana Cellular using the AWS PCS spectrum.

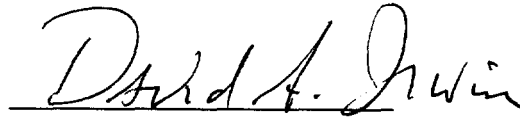
#### **IV. CONCLUSION**

For the foregoing reasons, Acadiana Cellular submits that it will serve the public interest, convenience, and necessity for the Commission to grant this Petition. To hold otherwise would turn a blind eye to Cingular's overt anticompetitive conduct towards Acadiana Cellular.

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<sup>11</sup> Letter from John Muleta, Chief, Wireless Telecommunications Bureau, to David Jatlow, AWS and David Richards, Cingular, WT Docket No. 04-70 et al. (June 30, 2004).

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "David A. Irwin", written over a horizontal line.

David A. Irwin  
Gregory V. Haledjian<sup>12</sup>

*Counsel to Acadiana Cellular General Partnership,  
Louisiana Cellular, Inc., and Delcambre Cellular,  
Inc.*

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November 26, 2004

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<sup>12</sup> Admitted in Maryland. Not admitted in D.C.

## **ATTACHMENT I**

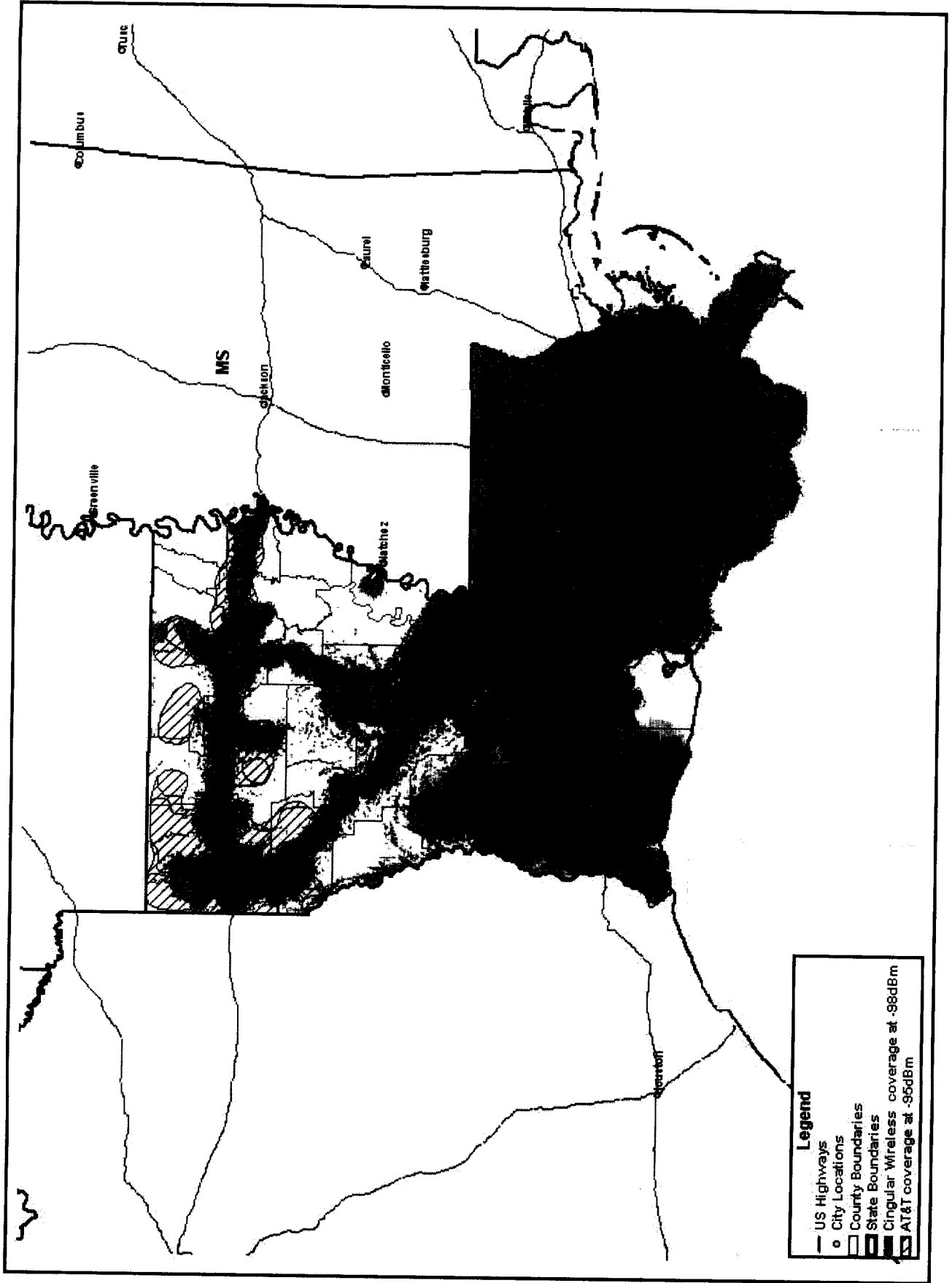
BTA Name (BTA#)	Cellular Block A	Cellular Block B	PCS Block A	PCS Block B	PCS Block C	PCS Block D	PCS Block E	PCS Block F	EMR
Atlanta, GA (BTA024)	Carroll Part (V) Southwest (V) VZW Wtr (V) (V) VZW East (V)	South Mobility (C) GA RSA #1 (C) GA RSA #2 (C) GA RSA #3 (C) NE GA RSA Public Svc. Car Wireless Car	AT&T Wtr. PCS (A) BellSouth Mobility (C) Tritel AM Hold. (A) WirelessCo (S)	PowerTel Atlanta (T)	Cascade Wtr. (A) GWI PCSB	SprintCom (S)	Atlanta Cal. (V) Calico Part (V) VZW East (V)	NextWave Power Part	Nextel Southern
Atlantic City, NJ (BTA025)	SW Bell Mobile (C)	Wireless Car	AT&T Wtr. PCS (A) AT&T Wtr. PCS (A) Tritel PCS	Philisco (S)	BCN Com. (T) Omnipoint AM. City (T) Tritel PCS	Calico Part (V)	SW Bell Mobile (C)	NextWave Power Part	Nextel
Augusta, GA (BTA026)	Calico Part (V) VZW Wtr (V) (V) VZW East (V)	ALL TEL Com. (B) GA RSA #8 NE GA RSA SC RSA #2 (B) SC RSA #7 (B) Wireless Car	AT&T Wtr. PCS (A) AT&T Wtr. PCS (A) Tritel PCS	PowerTel Atlanta (T)	Tritel PCS	SprintCom (S)	BellSouth P.C. (C)	VSTR GSM II (T)	Nextel Southern
Austin, TX (BTA027)	Concho Cal. Tel. Dobson Cal. Tel. (A) Texas Cal. Tel. (A)	ALL TEL Com. (B) GCMC5H #2 Cingular Austin (C) Cingular TX #16 (C) Comcast DE Fresno MSA (V) Calico Part (V)	Dallas MTA (V)	AT&T Wtr. PCS (A) WirelessCo (S)	NextWave Pers. Comm.	VSTR PCS II Lic. (T)	AT&T Wtr. PCS (A)	VSTR PVSS PCS (T)	Nextel
Bakersfield, CA (BTA028)	Bakersfield Cal. (A)	Concho Cal. Tel. Dobson Cal. Tel. (A) Texas Cal. Tel. (A)	Sprint PCS Lic. (S) VSTR PCS BTA I (T) AT&T Wtr. PCS (A) VSTR Tampa/Ontario (T)	Omnipoint NY MTA (T) PSC Televis. M. Shes. (C) AT&T Wtr. PCS (A)	Entertain. Unlimtd.	AT&T Wtr. PCS (A)	Fresno MSA (M)	Alpha-California	Nextel
Baltimore, MD (BTA029)	MD RSA 2 (C) SW Bell Mobile (C)	Calico Part (V)	AT&T Wtr. PCS (A) RCC MN	WirelessCo (S)	NextWave Pers. Comm.	Calico Part (V)	Calico Part (V)	VSTR GSM II (T)	Nextel
Bangor, ME (BTA030)	Alt. Cal. Tel. DE (A) Bangor Cal. Tel. (U) ME RSA #1 (U)	ME RSA #4 (U) RCC MN	AT&T Wtr. PCS (A) RCC MN	WirelessCo (S)	Salmon PCS (C) VSTR GSM II (T)	Decon Bangor	Omnipoint DC Lic. Hold. (T)	Portland Cal. (V)	
Barleesville, OK (BTA031)	WWC Lic. (W)	USDOC Tulsa (U)	AT&T Wtr. PCS (A) SW Bell Wtr. (C)	WirelessCo (S)	Metropolitan Com. VSTR PVSS PCS (T)	VSTR PCS BTA I (T)	Am. Cal. (D)	Poplar PCS - Bartlesville	Nextel
Baton Rouge, LA (BTA032)	Comcast DE (B) Baudette (B)	Audience Southwest Mobility (C) Cal. S. Lic. Kenton Tel. Co. L.A. RSA #7 (C) Tulsa RSA #1 (C)	WirelessCo (S)	VZW Part. Com. (V)	VSTR GSM I (T)	TelcoPart PCS (A)	AT&T Wtr. PCS (A)	TelcoPart Hold. II (A)	Nextel
Beaumont-Port Arthur, TX (BTA034)	Beaumont-Port Arthur, Houston Cal. (C) NE TX Cal. (A)	Cingular TX #13 (C) GTE Mobile S. TX (V) GTE Mobile TX #17	VSTR Houston (T)	GTE Mobile S. TX (V) Houston MTA (A) San Antonio MTA (V)	Houston Cal. (C) TelcoPart Hold. II (A)	SprintCom (S)	AT&T Wtr. PCS (A)	TelcoPart Hold. II (A)	Nextel
Bellingham, WA (BTA035)	Bellingham Cal. (A)	VZW Wtr. (V) (V)	Pac Bell Wtr. AM (C) Qwest Wtr. (C)	VSTR Tampa/Ontario (T) WirelessCo (S)	NextWave Pers. Comm.	AT&T Wtr. PCS (A)	AT&T Wtr. PCS (A)	VSTR PVSS PCS (T)	Nextel

**ATTACHMENT II**



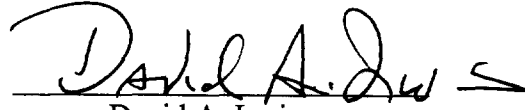
# Cingular & AWS Coverage Map for LA

(Coverage as of 12/03)



**Certificate of Service**

I David A. Irwin, do here by certify that I have served the attached "Petition for Reconsideration filed by Acadiana Cellular General Partnership" on the following people by first class mailed, postage prepaid, this 26<sup>th</sup> day of November, 2004.

  
David A. Irwin

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